

## PPAT Responsibilities That Do Not Issue the Deed of Grant of Guarantee Rights and Position of Creditors in Bankruptcy

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### Abstract:

**Purpose** - The action taken is that lending and borrowing are not accompanied by the existence of an item that the debtor guarantees. However, in reality, in banking, there is a provision of a facility from the bank for its customers who do not lend to the debtor without including a guarantee.

**Methodology** – The research method conducted by the author is normative research. The formulation of the problems that will be discussed includes 1. What is the responsibility of the PPAT towards the cover note stating that the Mortgage will be installed? 2. What is the creditor's position in bankruptcy because the mortgage right is not installed by the PPAT? The responsibility of a PPAT for a cover note that has stated the installation of mortgage rights is a criminal responsibility in which the right leads to individual responsibility.

**Findings** - There is an imposition of sanctions either dishonorably dismissed or imposition of an institution for an action carried out by the PPAT and the existence of civil responsibility that provides direction in compensating creditors with the loss of the certificate of ownership.

**Implication** - Judging from the position of a creditor in bankruptcy because the mortgage right is not installed by the PPAT, it is a creditor's position in the event of bankruptcy if it is based on the position of creditors with an equal or equal position. The granting of equal rights from the results of a bankrupt boedel execution has been adjusted to the amount of each bill.

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## INTRODUCTION

National development, which has experienced an increase with an emphasis on the economic sector, urgently requires a large enough amount of funding which will later be necessary for the existence of an institution, namely banking, which is currently regulated in the Banking Law. The provisions of the 1945 UUDNRI regulate the national economy, which is carried out based on economic democracy.

The existence of guaranteed rights that are classified as vital will provide legal certainty for parties with interests. So that later it can be carried out by increased community participation in the implementation of development for the realization of society, according to Pancasila.

One of the things that play an essential role in the running of economic activity is capital. This capital can be likened to a life used in a business's startup stage. Guarantees are also used as a place for lenders to implement economic activities in people's lives. The problem of having a guarantee will affect everyday life because a guarantee has a role as a tool in one's legal actions.

The action taken that lending and borrowing is not accompanied by the existence of an item that the debtor guarantees. However, in reality, in banking, there is a provision of a facility from the bank for its customers who do not lend to the debtor without including a guarantee. It is understandable if the debtor often fulfills his obligations overdue as the provisions and problems also occur if the debtor does not want to pay his debt. So that in getting the right to return, the creditor will take action to collect collateral for movable or immovable goods owned by the debtor (Revelation Primary, 2015).

In connection with the Regulations regarding PPAT, it is stated that PPAT has the authority granted by law relating to making evidence for a legal action concerning land rights or ownership rights of flat units, which become the basis for land registration.

This rule is a guideline in the profession of a PPAT if a profession owned by a PPAT has been regulated separately and with limitations so that later a PPAT can carry out the profession properly. The authority possessed by a PPAT is to draw up a deed regarding land rights and ownership rights to an apartment unit located in the PPAT work area. The basis for law enforcement is that a PPAT has moral integrity, which can later encourage moral integrity on the principle of being prudent in carrying out the profession (Anugrah et al., 2020).

Land is an object required by financial institutions as collateral for credit. In general, a plot of land whose sales are effortless with increasing land prices which continue to increase can be charged with mortgage rights; this will give mortgage rights which are given special rights to creditors. To fulfill credit legality, an object on land must have collateral rights imposed. The guaranteed right is in the form of a mortgage right as stated in the law, which clearly states if giving or receiving credit by another party is related to providing legal certainty for everyone with interest (Hirsanudin, 2008).

The economic system in Indonesia is supported by an institution, namely banking, which is considered necessary for guarantees with the help of a Notary who also provides accountability in a legal remedy for parties in need.

According to Sudikno, an agreement is a legal relationship based on an agreement in the emergence of a legal effect that occurs between legal subjects who are entitled to carry out an obligation according to the agreement that has been made.

In the Banking Law, it states that if credit becomes a provider of money or bills that can be equated with it based on an agreement or agreement in terms of borrowing and borrowing carried out by a person with a bank, then that person must repay the debt following a predetermined period.

According to Gatot Wardoyo, the clause in a credit agreement has several interrelated functions. First, it has a function as a principal agreement which means a credit agreement is a thing that determines whether or not an agreement is canceled, for example, binding to a guarantee. Second, credit agreements are evidence against limitations in the rights and obligations of creditors and debtors. Third, a credit agreement has a function in implementing monitoring of a credit (Wardoyo, 1992).

Banks legally use two types of credit agreements to grant credit to debtors: credit agreements made privately or private deeds and agreements made by a notary (Untung, 2000).

First, a deed regarding a credit agreement made directly or privately is an agreement for the granting of credit by a bank directly made between the parties without a Notary. The agreement has been made and signed by the parties. Second, is an authentic deed of agreement, namely an agreement between banks that provide credit for customers made before a notary.

In the UUPA, within the scope of authority of officials as stipulated in government regulations, all of this relates to legal actions regarding land, so the officials in question are officials who have the task of making land deeds for legal actions regarding the land in question. PPAT is authorized to do authentic deeds regarding land rights and ownership rights to apartment units or provide evidence regarding land rights as the basis for land registration. PPAT has an important position and role in life in the State of Indonesia in making deeds of transfer of land rights in the territory of Indonesia (Salim, 2016).

Based on the background above, the author will discuss the responsibilities of a PPAT who does not issue a deed granting mortgage rights and the position of creditors in bankruptcy.

## METHODS

The type of research used in this research is normative legal research regarding cover notes from PPAT. The problem approach is the Per-UU approach, the conceptual approach, and the case approach. The source of legal material used is primary legal material which refers to problem-solving. In the study of Decision Number: 2/Pid.Pra/2022/PN Kpg, which contains a vague norm relating to cover notes, primarily the responsibility of a PPAT.

## RESULT AND DISCUSSION

**PPAT Responsibilities Against Covernote Stating Mortgage Will Be Installed.** In the inclusion of a crime, generally, a crime is an act that is very detrimental and has committed a violation of a norm that exists in society. So that from a crime concept, there must be responsibility for the negative impacts of a crime. The existence of criminal responsibility is an obligation of individuals and corporations to be responsible for the consequences of actions due to crimes that have caused losses in two ways, among others.

A PPAT who has made a mistake can be given a sanction, namely the existence of a dishonorable discharge or up to the existence of a prison sanction for the PPAT. There was an element of error in the decision Number: 2/Pid.Pra/2022/PN Kpg, namely the PPAT named Albert Riwu Kore, had made a mistake that was intentionally caused directly due to a lack of caution or thoroughness which resulted in an act of embezzlement.

According to civil law, legal responsibility is the consequence of an action by someone that can be caused by a violation of an applicable rule (Hamzah, 2005).

In a legal system, there is accountability due to not fulfilling an obligation according to applicable law. There is accountability in civil law, namely default and PMH (Moegni, 1979).

Liability for default following the provisions of Article 1238 of the Civil Code, where the default is a condition if a debtor is declared to have not carried out an order or to a deed or the strength of the agreement. The enforcement of an agreement is the basis for civil law accountability when viewed from a default. A default occurs because the parties make an agreement based on the provisions of Article 1313 of the Civil Code, which states that an agreement is an act between one or more people who are wrongly bound to one or more people. A person can be said to have been negligent, namely, the party charged with the obligation to act or has carried out his obligations. That person will be subject to prosecution in the form of civil legal liability.

The provisions in Article 1234 of the Civil Code divide obligations in an agreement, including achievements in giving, doing, or not doing something. According to R. Subekti, if the default can be in the form of a situation in which the parties must carry out the achievement, namely the absence of implementation of what was promised, the implementation of what was promised but the agreement was not correct, the delay in implementing the agreement and carrying out something that could not be done.

If a default occurs, there are several forms of a lawsuit in civil liability, including: First, *parate executie*, which means that if the creditor carries out his claim directly against the debtor, that is, without going to court, the parties concerned act as joint breakers. In practice, this will apply for light binding or small economic value. Second is settlement by arbitration, in which a creditor has been harmed by the debtor's default so that the creditor and the debtor have agreed to settle the dispute by submitting it to the arbitrator. Furthermore, the decision made by the debtor has required the parties to comply if it turns out that the decision gives the parties a sense of profit or loss. Third, *Rieele executie* is a technique of resolving disputes between creditors and debtors in court through a judge. This settlement is carried out on disputes if the economic value is high and the problem is enormous. Alternatively, it can happen if the parties do not get a dispute resolution through deliberation.

In civil liability based on unlawful acts, if a rule of law that has been violated becomes an act that seriously conflicts with other people's rights, an action contrary to the norms of decency and decency, and the action taken violates legal principles in general. The definition of an unlawful act is an act that can result in another person being harmed without a prior legal relationship, whether the legal act was carried out or not. If an unlawful act occurs, civil liability includes:

First, direct accountability is based on Article 1365 of the Civil Code, namely the existence of a widespread interpretation starting in 1919 originating from Article 1365 of the Civil Code so that everything that has never been prosecuted or imposed sanctions and at this time a person who commits an offense can be sued for payment of compensation as one of his responsibilities. Second, indirect accountability as stipulated in Article 1367 of the Civil Code which states that if a person is not only able to take responsibility for the unlawful acts he has committed but for the actions he has carried out from other people who will be held accountable as well as for the goods under his supervision. Responsibility for a consequence resulting from an unlawful act in a civil manner is not only for the perpetrator but can be transferred to another party or the perpetrator (Sidharta, 2000).

Actions classified as an act that is against the law that can ask for responsibility to pay compensation contain elements, namely an act that is done intentionally and becomes a negligent act, against the law is an act that has been violated, or written rules contain a conflict with the legal obligations of a person who commits a violation and an action that is a violation of unwritten rules that everyone should have in the social life of their community.

The existence of an act that is detrimental, as stipulated in Article 1365 of the Civil Code, determines a person's obligation to commit an unlawful act in the provision of compensation; compensation is based on the position and ability of the parties and depends on the circumstances. In the Civil Code, against one judgment and another, a judge must act in a fair and balanced manner. The existence of a causal relationship between mistakes and losses, that is, an act committed by someone against the law is one of the essential causal reasons; the proof is if someone's mistake becomes the cause of a loss to another person or a loss caused by another person who is suitable from someone's mistake that can be sued.

The existence of civil liability is based on an unlawful act and the result of a default, one of which is compensation. However, there is a difference between the goals and the final result of an unlawful act: compensation, which becomes an action to restore the situation. In this case, the purpose of a default lawsuit is the payment of compensation for losses that the debtor must carry out. Compensation for default actions so that the parties carry out by paying compensation as stipulated or timely.

In a process in court in carrying out a prosecution of civil responsibility, there is one thing that makes a difference to criminal responsibility at the civil trial stage. What is sought is one truth from a formal truth. The judiciary is possible in the search for truth materially, and the judge will correctly decide based on a formal truth (M. Yahya, 2013).

In the case against a PPAT named Albert Riwu Kore in East Nusa Tenggara (NTT), according to Court Decision Number: 2/Pid.Pra/2022/PN Kpg so that a civil liability if he as a PPAT is required to compensate for losses from prosecution by parties who have suffered losses because APHT is authentic evidence in executing an object guaranteed by the debtor. The occurrence of a loss in the case is a material loss that the creditor has felt. The loss is a certificate in the amount of 9 ownership certificates if accumulated around Rp. 4,500,000,000, - (four billion five hundred million rupiahs) has been eliminated.

The existence of rules governing a legal relationship between everyone, both in society, institutions, or each country, is carried out according to the rights and obligations that the law has given. Every legal relationship created will contain two sides. Namely, an obligation must contain rights, and the existence of obligations is not justified if it does not contain rights.

As an authority, one has the power granted by the law. As an authority, one has the power bestowed by the law. There is legal protection for an interest that is protected either personally or in general (Zainal, 2012).

Right is defined as an authority from a legal object to a legal subject. Several legal experts have provided a definition, including Notonegoro states that rights are a power for a person to carry out many activities. The granting of these rights to a person cannot be transferred or shared with other people (Satjipto, 2000).

According to Curzon, it has been explained that rights contain five types of rights, namely absolute, namely rights with the realization and enforcement of the law; positive, namely rights based on action or all matters in prosecution; primary, namely the existence of a legal form with a description of other rights because it has to complete fundamental rights, secondary rights, and the main thing, public rights which apply to social life and property rights are rights that are linked to an item owned as well as private rights that are aimed at individual status.

According to Sukanto Notonagoro, a right becomes an authority if someone is given authority to receive or has carried out something desired and obtained, which must be implemented. In this case, a right cannot transfer to another person. The existence of rights and obligations as citizens must have rights in the prosecution involved (Sonny, 2003).

According to Satjipto Rahardjo, giving meaning to rights is a form of control given by law to someone who aims to protect an interest (Mas, 2011).

According to Utrecht, a right is an interest between one party that has received recognition from the law and is guaranteed by the rules and another party exercises this right.

The exercise of a right is a legal prosecution so that other people have an attitude and treatment in their way. Some reviews of rights are seen from several aspects, including the existence of these rights, rights resulting from being related to life as a state, and socially related to community life (Angrayni, 2014).

From the point of view of existence, rights can be divided into 2, namely original rights and derivative rights. Concerning the life of a country, there are fundamental rights and political rights where these rights form the basis, and there is a distinction between fundamental rights with ancient characteristics and basic social rights. In terms of relating to social life if these rights are personally absolute and relative.



There are several characteristics of the attachment to a right. First, the attachment of a right to a person who is said to be the owner or subject to the said right is also said to be someone with rights to the object targeted by that right. Second, rights are addressed to other people who are holders of the parties' obligations in a correlative relationship. Third, the rights inherent in a person have an obligation for the other party to carry out or not to carry out the act committed. Fourth, an action is given, which is then mentioned as the object of that right. Fifth, the existence of each right that legally has a label, including the existence of an event that later becomes the reason that results in the right being attached to the owner.

Some rights can be classified into several parts, including perfect and imperfect rights, whose implementation is based on legal rules that have received recognition from the law itself but only sometimes by implementation in court. Main and additional rights are rights that extend from the rights of others. Additional rights are rights that other rights have supplemented. Suppose the additional rights are rights supplemented by the primary rights, such as a lease agreement that gives additional rights to the primary rights, generally for landowners. Public and civil rights exist in social life in general, namely in the state. Civil rights are for individuals, including the right of a person to provide enjoyment for the goods owned. Positive and negative rights are rights implemented from a positive action on the part of the existing correlative obligations, such as the right to receive personal benefits. Property and personal rights exist concerning goods controlled by someone who can then be taken over, regarding personal rights that have to do with someone's position, which cannot be transferred.

Ownership of a right by a legal subject can arise or be born and can be erased if a legal event arises which arises from several things, among others, due to the existence of a new legal subject in the form of a person or a legal entity, the existence of an agreement with the agreement of the parties who have agreed, a loss suffered by one party caused by another person, the existence of a person who has carried out an obligation which is a condition for obtaining a right and because of a right which is expired which arises from rights for someone and can result in the abolition of the rights and obligations of other people.

In connection with the erasure of other people's rights due to the following matters: because the holder of the said right has died and no one can replace or heir who gets an appointment from a person holding the right or by the rule of law itself, the valid right has expired or has expired, and no further extension can be done, the object of the right has been accepted, the acquisition of rights from the terms of the obligations have been fulfilled, and there is an expiration that can cause the rights to be erased.

Credit in its development provides direction with a function in providing an attraction for parties that is useful in achieving a goal in fulfilling a need in the field of business or daily needs. Parties who have received credit are required to be able to provide instructions in obtaining high achievements for the advancement of a business or fulfillment of needs obtained, while parties providing a credit facility seen on a material basis are required to have profitability based on calculating the rights that become reasonable from capital as an object of credit and in a spiritual sense something has been obtained that becomes satisfied due to the habit of assisting other parties in achieving something advanced.

In the creditor agreement, there are several rights, including when someone who has a debt either to a person or to a legal entity or institution that provides other loans, then related to the rights and obligations originating from the director can provide a loan to the debtor in the form of money or other capital which is then used according to its purpose. Based on this, a creditor with the right is obliged to assist anyone who carries out a loan. Instead, a creditor with the right to give custody of goods or valuable objects authorized by the debtor is used as a guarantee for the creditor in carrying out the debt that has been repaid.

A creditor's rights are valid if there is a credit agreement, even though the guarantee does not have a mortgage right. In a credit agreement that has received creditor approval, the debtor makes the agreement perfectly binding and applies to the parties. Implementation of the debtor who defaults so that the debtor then carries out a lawsuit in court that is adjusted to the legal domicile, relating to an object that is used as collateral cannot be executed because execution is carried out in a credit agreement where the APHT is not registered.

Related to a theory of justice, if justice gives direction to the role or authority of the PPAT, namely the provision of a fair legal measure for parties who need it, this can provide evidence of APHT, which can be used as a basis for executing the object of a debtor when he is unable to fulfill his obligations.

A PPAT did not carry out the APHT binding, which should have coincided with the loss of 9 certificates of ownership without the director's knowledge, causing losses due to the loss of these certificates.

Legal consequences if the PPAT does not issue the Deed of Granting Mortgage Rights (APHT) for an object that is pledged as submitted by the debtor to the creditor; in this case, the police will submit a summons with an attachment to the Indonesian Notary Association in order to obtain a recommendation that is used to carry out the summons against the PPAT, if permission is issued from the Notary Association regarding the letter, in this case, the police will make a summons directly to the PPAT in question.

On the other hand, if there is no permission from the Notary Association in terms of summoning the PPAT, the Notary Association that carries out the PPAT inspection will first examine if the PPAT is not proven guilty of doing something wrong so that the PPAT is declared free from the law. On the other hand, if the PPAT is declared to have made a mistake, the PPAT will carry out the obligation to pay compensation costs and undergo the sanctions experienced by the creditor.

**Position of Creditors in Bankruptcy Without Installing Mortgage by PPAT.** One of the principles called the *pacta sunt servanda* principle is a principle that has a relationship to a result of the existence of an agreement. Article 1338 of the Civil Code, which regulates all matters in the agreement made by the parties, will become law.

The strength of an agreement that is legally made has the power to apply like a law made by legislators, and the parties must obey it if views that can be forced are following the assistance of means by law enforcement. The basis for granting recognition of the existence of freedom and independence by the parties at the time of agreeing will be determined freely, among others, concerning the contents, conditions for the application of the agreement, the form and use of the legal basis in the agreement (Yudha, 2010).

As a consequence of the *Sun servanda* pact, the judge or a third party will be prohibited from interfering in terms of the contents of an agreement made by the parties to the agreement. (Djohari & Ali, 1989)

Law enforcement related to legal certainty becomes a component of positivistic legal thought. In Indonesia, it has become a rule-of-law state until now, and the reference of PerUU still refers to the principle of legality (Rahardjo, 2009).

All thoughts outside of a principle will get conflicted with each other, which will link the parties to a protracted debate, and there is no resolution. However, from the awareness of a legal need that encourages the current law to apply before a legal act violates the rule.

Regarding the norms that exist in practice now, they do not provide a balance and keep up with developments in the business world, which moves very quickly. Often this condition causes a vacuum in the rule of law. The existence of a legal vacuum that has existed for a long time, in practice, can be found in practice in the existence of loans extended to debtors by banks (Shahrullah & Djufri, 2018).

The existence of the provision of credit by banks to their customers can guarantee legal certainty from the existence of credit given, so there is a need for the role of a Notary and PPAT related to authentic deeds. The burden of a credit guarantee is mainly related to guarantees for land rights, namely through the making of a deed related to the granting of mortgage rights (HT), and the deed is charged with a mortgage with guarantees and collateral (Pinatih, 2019).

Collateral for a deed used as collateral for a loan received by the customer or in a credit agreement is required to be thorough on the part of the bank in researching a guarantee; the parties can ask for the services of a PPAT. The provision of services provided by the PPAT is generally used by the community in civil legal action (Enggar Diah, 2020).

A PPAT has the authority to contain something valid in the signature. There is the certainty of a date from the private deed that has been made and registration in the general ledger or unique book and making copies of it and then making explanations as clearly written, carrying out an endorsement on an original document that matches a photocopy, giving a consultation regarding the contents of the deed to the parties, doing a deed which is then defended or making a deed of minutes of the auction (Kadir et al., 2019).

When a credit loan process is carried out until the credit is disbursed in a deed of agreement before a Notary in the stages for disbursement, the bank will require a cover note to provide a statement in the process. A credit loan that has been running must be based on a credit loan agreement. However, the process of ratifying an agreement of the credit loan is fast, which often results in difficulties in disbursing the credit resulting from a process of the agreement that cannot be disbursed, resulting in a process in the PPAT for checking.

In Notary terms, a cover note is a statement, a letter issued by a Notary. It can generate trust and be relied upon in the signature, stamp, and label, which is then used to guarantee the facts that have been done. The form

of the Covernote letter becomes a statement made by a Notary and for legal action by the parties carried out by the parties before the Notary. The cover note will serve as an instrument for covering all legal actions in providing follow-up to other legal actions (Syahran, 2012).

An incomplete cover note made by a Notary/PPAT, for example, is in the case of a deed or document that is in the stage of the land management process or at the time of the execution of credit signatures from the parties whose cover note has been processed by the Notary will be kept for creditors and banks until the copy can be issued.

The cover note also includes a promise from a Notary/PPAT by giving a period when the deed is taken care of and for the document, and an extension can be made if the matter cannot be resolved. If a Notary/PPAT practice is used often by the Notary/PPAT, namely making a cover note whose contents are in the form of a statement and statement from the Notary/PPAT which mentions or describes if a legal action by the parties or facing a certain deed has been carried out before a Notary/PPAT.

The signing or ratification of a cover note by a Notary/PPAT is because the cover note has a binding nature. After all, it can guarantee the validity of a document by the parties. The issuance of a cover note is a solid basis for the bank when legal action is carried out related to the credit agreement, and the cover note is in effect starting from its publication until the process of a file is final.

The center of law enforcement of life activities that have been planned by law and from the evaluation of the law. The existence of law enforcement becomes an interaction between human actions represented by a different interest in a frame in the rules as agreed upon to achieve justice (Fakrulloh, 2005).

Indroharto's opinion applies a legality principle that focuses on forming and enacting legal certainty and equal treatment. There is something that is the same as a cause for everyone who is in a condition as stipulated in the law relating to the rights and obligations of citizens. The existence of legal certainty is the orientation of a rule that has had a significant influence on the life and actions carried out by the government (Muladi, 2002).

Provisions regarding cover notes from a legal perspective as issued by a Notary/PPAT have a very inherent legal position; their legal position is in a deed drawn up under the hand starting from an agreement. The cover note is used as a temporary guarantee. Suppose a cover note is not included with the APHT. In that case, the cover note will be legally valid because the cover note will still include the identity of the parties and also all documents that have been submitted, both the value and entitlements that have been submitted.

## CONCLUSION

The responsibility of a PPAT for a cover note that has stated the installation of mortgage rights is a criminal responsibility in which the right leads to individual responsibility. There is an imposition of sanctions either dishonorably dismissed or imposition of an institution for an action carried out by the PPAT as well as the existence of civil responsibility that provides direction in terms of granting compensation to creditors with the loss of the certificate of ownership.

Judging from the position of a creditor in bankruptcy because the mortgage right is not installed by the PPAT, it is a creditor's position in the event of bankruptcy if it is based on the position of creditors with an equal or equal position. The granting of equal rights from the results of a bankrupt boedel execution has been adjusted to the amount of each bill.

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